

Steven J. Pitterle  
Director – Contract Negotiations  
Wholesale Markets



600 Hidden Ridge HQE03B67  
P.O. Box 152092  
Irving, Texas 75038

Phone 972/718-1333  
Fax 972/718-1279  
steve.pitterle@verizon.com

August 13, 2003

Lee Weiner  
Senior Vice President and General Counsel  
XO Communications  
11111 Sunset Hills Drive  
Reston, Virginia 20190

Re: Requested Adoption Under Section 252(i) of the TA96

Dear Mr. Weiner:

Verizon North Inc., f/k/a GTE North Incorporated ("Verizon"), a Wisconsin corporation, with principal place of business at 8001 West Jefferson, Ft. Wayne, Indiana 46804, has received your letter stating that, under Section 252(i) of the Telecommunications Act of 1996 (the "Act"), XO Wisconsin, Inc. ("XO"), a Washington corporation, with principal place of business at 11111 Sunset Hills Drive, Reston, Virginia 20190, wishes to adopt the terms of the Interconnection Agreement between MH Telecom Inc. ("MH Telecom") and Verizon that was approved by the Wisconsin Public Service Commission (the "Commission") as an effective agreement in the State of Wisconsin, as such agreement exists on the date hereof after giving effect to operation of law (the "Terms"). I understand XO has a copy of the Terms. Please note the following with respect to XO's adoption of the Terms.

1. By XO's countersignature on this letter, XO hereby represents and agrees to the following five points:
  - (A) XO adopts (and agrees to be bound by) the Terms of the MH Telecom/Verizon agreement for interconnection as it is in effect on the date hereof after giving effect to operation of law, and in applying the Terms, agrees that XO shall be substituted in place of MH Telecom Inc. and MH Telecom in the Terms wherever appropriate.

- (B) Notice to XO and Verizon as may be required under the Terms shall be provided as follows:

To: CSC-Lawyers Incorporating Service Company  
Party: XO Wisconsin, Inc.  
25 West Main Street  
Madison, WI 53703

To Verizon:

Director-Contract Performance & Administration  
Verizon Wholesale Markets  
600 Hidden Ridge  
HQEWMNOTICES  
Irving, TX 75038  
Telephone Number: 972-718-5988  
Facsimile Number: 972-719-1519  
Internet Address: wmnotices@verizon.com

with a copy to:

Vice President and Associate General Counsel  
Verizon Wholesale Markets  
1515 N. Court House Road  
Suite 500  
Arlington, VA 22201  
Facsimile: 703-351-3664

- (C) XO represents and warrants that it is a certified provider of local telecommunications service in the State of Wisconsin, and that its adoption of the Terms will cover services in the State of Wisconsin only.
- (D) In the event an interconnection agreement between Verizon and XO is currently in effect in the State of Wisconsin (the "Original ICA"), this adoption shall be an amendment and restatement of the operating terms and conditions of the Original ICA, and shall replace in their entirety the terms of the Original ICA. This adoption is not intended to be, nor shall it be construed to create, a novation or accord and satisfaction with respect to the Original ICA. Any outstanding payment obligations of the parties that were incurred but not fully performed under the Original ICA shall constitute payment obligations of the parties under this adoption.
- (E) Verizon's standard pricing schedule for interconnection agreements in the State of Wisconsin (as such schedule may be amended from time to time) (attached as Appendix 1 hereto) shall apply to XO's adoption of the Terms. XO should note that the aforementioned pricing schedule may

contain rates for certain services the terms for which are not included in the Terms or that are otherwise not part of this adoption, and may include phrases or wording not identical to those utilized in the Terms. In an effort to expedite the adoption process, Verizon has not deleted such rates from the pricing schedule or attempted to customize the wording in the pricing schedule to match the Terms. However, the inclusion of such rates in no way obligates Verizon to provide the subject services and in no way waives Verizon's rights, and the use of slightly different wording or phrasing in the pricing schedule does not alter the obligations and rights set forth in the Terms.

2. XO's adoption of the MH Telecom Terms shall become effective on August 27, 2003. Verizon shall file this adoption letter with the Commission promptly upon receipt of an original of this letter countersigned by an authorized officer of XO. The term and termination provisions of the MH Telecom/Verizon agreement shall govern XO's adoption of the Terms. The adoption of the Terms is currently scheduled to expire on September 30, 2004.
3. As the Terms are being adopted by you pursuant to your statutory rights under section 252(i), Verizon does not provide the Terms to you as either a voluntary or negotiated agreement. The filing and performance by Verizon of the Terms does not in any way constitute a waiver by Verizon of any position as to the Terms or a portion thereof, nor does it constitute a waiver by Verizon of all rights and remedies it may have to seek review of the Terms, or to seek review in any way of any provisions included in these Terms as a result of XO's 252(i) election.
4. Nothing herein shall be construed as or is intended to be a concession or admission by Verizon that any provision in the Terms complies with the rights and duties imposed by the Act, the decisions of the FCC and the Commissions, the decisions of the courts, or other law, and Verizon expressly reserves its full right to assert and pursue claims arising from or related to the Terms.
5. Verizon reserves the right to deny XO's adoption and/or application of the Terms, in whole or in part, at any time:
  - (a) when the costs of providing the Terms to XO are greater than the costs of providing them to MH Telecom;
  - (b) if the provision of the Terms to XO is not technically feasible; and/or
  - (c) to the extent that Verizon otherwise is not required to make the Terms available to XO under applicable law.
6. For avoidance of doubt, please note that adoption of the Terms will not result in reciprocal compensation payments for Internet traffic. Verizon has always taken the position that reciprocal compensation was not due to be paid for Internet traffic under section 251(b)(5) of the Act. Verizon's position that reciprocal compensation is not to be paid for Internet traffic was confirmed by the FCC in

the Order on Remand and Report and Order adopted on April 18, 2001 (“*FCC Internet Order*”), which held that Internet traffic constitutes “information access” outside the scope of the reciprocal compensation obligations set forth in section 251(b)(5) of the Act.<sup>1</sup> Accordingly, any compensation to be paid for Internet traffic will be handled pursuant to the terms of the *FCC Internet Order*, not pursuant to adoption of the Terms.<sup>2</sup> Moreover, in light of the *FCC Internet Order*, even if the Terms include provisions invoking an intercarrier compensation mechanism for Internet traffic, any reasonable amount of time permitted for adopting such provisions has expired under the FCC’s rules implementing section 252(i) of the Act.<sup>3</sup> In fact, the *FCC Internet Order* made clear that carriers may not adopt provisions of an existing interconnection agreement to the extent that such provisions provide compensation for Internet traffic.<sup>4</sup>

7. Should XO attempt to apply the Terms in a manner that conflicts with paragraphs 3-6 above, Verizon reserves its rights to seek appropriate legal and/or equitable relief.
8. In the event that a voluntary or involuntary petition has been or is in the future filed against XO under bankruptcy or insolvency laws, or any law relating to the relief of debtors, readjustment of indebtedness, debtor reorganization or composition or extension of debt (any such proceeding, an “Insolvency Proceeding”), then: (i) all rights of Verizon under such laws, including, without limitation, all rights of Verizon under 11 U.S.C. § 366, shall be preserved, and XO’s adoption of the Verizon Terms shall in no way impair such rights of Verizon; and (ii) all rights of XO resulting from XO’s adoption of the Verizon terms shall be subject to and modified by any Stipulations and Orders entered in the Insolvency Proceeding, including, without limitation, any Stipulation or Order providing adequate assurance of payment to Verizon pursuant to 11 U.S.C. § 366.

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<sup>1</sup> Order on Remand and Report and Order, In the Matters of: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68 (rel. April 27, 2001) (“*FCC Remand Order*”) ¶44, remanded, *WorldCom, Inc. v. FCC*, No. 01-1218 (D.C. Cir. May 3, 2002). Although the D.C. Circuit remanded the *FCC Remand Order* to permit the FCC to clarify its reasoning, it left the order in place as governing federal law. See *WorldCom, Inc. v. FCC*, No. 01-1218, slip op. at 5 (D.C. Cir. May 3, 2002).

<sup>2</sup> For your convenience, an industry letter distributed by Verizon explaining its plans to implement the *FCC Internet Order* can be viewed at Verizon’s Customer Support Website at URL [www.verizon.com/wise](http://www.verizon.com/wise) (select Verizon East Customer Support, Business Resources, Customer Documentation, Resources, Industry Letters, CLEC, May 21, 2001 Order on Remand).

<sup>3</sup> See, e.g., 47 C.F.R. Section 51.809(c).

<sup>4</sup> *FCC Internet Order* ¶ 82.

## **SIGNATURE PAGE**

Please arrange for a duly authorized representative of XO to sign this letter in the space provided below and return it to Verizon.

Sincerely,

VERIZON NORTH INC.

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Steven J. Pitterle  
Director – Contract Negotiations  
Wholesale Markets

Reviewed and countersigned as to points A, B, C, D and E of paragraph 1:

XO WISCONSIN, INC.

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(SIGNATURE)

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Lee Weiner  
Senior Vice President  
And General Counsel

c: R. Ragsdale – Verizon